

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF PUERTO RICO

3  
4 ROBERTO MORALES-MONTÁÑEZ,

5 Plaintiff

6 v.

7 COMMONWEALTH OF PUERTO RICO;  
8 ADMINISTRACIÓN DE CORRECCIÓN  
9 (CORRECTIONS ADMINISTRATION);  
10 WILFREDO ESTRADA-ADORNO;  
11 LILLIAM ÁLVAREZ; ANNIE  
12 GONZÁLEZ-PÉREZ; MARÍA E.  
13 MELÉNDEZ-RIVERA; JUNTA DE  
14 LIBERTAD BAJO PALABRA (PAROLE  
COMMISSION),

CIVIL 08-1945 (FAB) (JA)

14 Defendants

15 OPINION AND ORDER

16 Plaintiff inmate Roberto Morales-Montáñez has filed a pro-se complaint  
17 pursuant to 42 U.S.C. § 1983, claiming that his civil rights were violated by  
18 Wilfredo Estrada-Adorno, Assistant Director of Programs and Services of the  
19 Corrections Administration; Lilliam Álvarez, Director of the Diversion Program of  
20 the Corrections Administration; and attorney María E. Meléndez-Rivera of the  
21 Corrections Administration. He claims that his right to equal protection under the  
22 law has been violated because as a male, he is being treated differently than  
23 similarly situated females in that he is not offered rehabilitation programs leading  
24 to parole, unlike females who are offered such programs although serving  
25 sentences, like himself, for a violation of Law 54 of August 15, 1989, P.R. Laws  
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3 Ann. tit. 8, § 601 *et seq.* Plaintiff alleges discrimination because he has been told  
4 that he is arguably not eligible for diversion programs for those who are serving  
5 sentences for violating Law 54 of 1989 (domestic violence), per Law 315 of 2004.  
6 Plaintiff complains that as a consequence of this treatment, the stipulations in the  
7 case of Efraín Montero-Torres v. Hernández-Colón, Civil 75-0828, have not been  
8 complied with. Plaintiff argues in his complaint that he has little remaining time  
9 in terms of serving his sentence and that the corrections system has only  
10 subjected him to punishment rather than social, moral and economic rehabilitation  
11 he is due under the Constitution of Puerto Rico. This part of his complaint has  
12 been rendered moot since plaintiff is no longer in Corrections Department custody.  
13 Plaintiff seeks compensatory damages, court-appointed counsel, and a cease and  
14 desist order to the Corrections Administration related to the gender discrimination  
15 as to those men serving sentences for domestic violence violations.

16 On May 11, 2009, I issued an opinion and order dismissing the complaint  
17 against the Corrections Administration and the Parole Board. (Docket No. 20.)  
18 Some of the issues addressed in that opinion are similarly addressed in this one  
19 because some of the same principles apply.

20 Since plaintiff is proceeding *pro se*, I construe the pleadings, however  
21 inartful, liberally. See Erickson v. Pardus, 551 U.S. 89, \_\_\_, 127 S. Ct. 2197,  
22 2200 (2007) (following Estelle v. Gamble, 429 U.S. 97, 106 (1976) and Haines v.

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3 Kerner, 404 U.S. 519, 520-21 (1972)). "The policy behind affording pro se  
 4 plaintiffs liberal interpretation is that if they present sufficient facts, the court may  
 5 intuit the correct cause of action, even if it was imperfectly pled." Ahmed v.  
 6 Rosenblatt, 118 F.3d 886, 890 (1st Cir. 1997); see Castro v. United States, 540  
 7 U.S. 375, 381 (2003) (noting that courts may construe pro se pleadings so as to  
 8 avoid inappropriately stringent rules and unnecessary dismissals of claims). All  
 9 well-pleaded factual averments made by a pro se plaintiff and reasonable  
 10 inferences drawn therefrom must be accepted as true. Aulson v. Blanchard, 83  
 11 F.3d 1, 3 (1st Cir. 1996).

14 Plaintiff alleges in his complaint that he feels discriminated against since he  
 15 has not been given services and necessary therapies in order to qualify for  
 16 diversion programs linked to parole. He alleges that this has been a clear practice  
 17 of the Department of Corrections since by not receiving services and therapies,  
 18 he can never qualify for parole so that he must extinguish his complete sentence.  
 19 He notes that this is not the same manner in which female convicts are treated.

22 Section 1983 creates a cause of action against those who, acting under color  
 23 of state law, violate federal constitutional or statutory law. See 42 U.S.C. §  
 24 1983<sup>1</sup>; Parratt v. Taylor, 451 U.S. 527, 535 (1981), overruled by Daniels v.

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26 <sup>1</sup> Title 42 U.S.C. § 1983 provides that:

27 Every person who, under color of any statute, ordinance, regulation,  
 28 custom, or usage, of any State or Territory or the District of

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3 Williams, 474 U.S. 327, 330-31 (1986); Wilson v. Town of Mendon, 294 F.3d 1,  
4 6 (1st Cir. 2002). In order for a plaintiff to be held liable under section 1983, his  
5 or her conduct must have caused the alleged constitutional or statutory  
6 deprivation. See Monell v. Dep't of Soc. Servs. of N.Y., 436 U.S. 658, 692  
7 (1978); Soto v. Flores, 103 F.3d 1056, 1061-62 (1st Cir. 1997). Because  
8 Morales-Montáñez' claims allege violations of federal constitutional law effected  
9 by state actors, his suit properly arises under section 1983, because of the  
10 allegedly disparate treatment he is being subject to when compared to the  
11 treatment received by women, all in violation of his rights to equal protection  
12 under the Fourteenth Amendment.

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16 This matter is before the court on motion to dismiss filed by Wilfredo-  
17 Adorno, Lilliam Álvarez and María E. Meléndez-Rivera who argue that the  
18 complaint fails to state a cognizable claim under the United States Constitution,  
19 that the complaint has been rendered moot, that plaintiff has failed to exhaust  
20 administrative remedies (which in any event would reach a conclusion that would  
21 render the process moot), and that the Eleventh Amendment to the United States  
22 Constitution bars the recovery of money damages against them in their official

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26 Columbia, subjects, or causes to be subjected, any citizen of the  
27 United States or other person within the jurisdiction thereof to the  
28 deprivation of any rights, privileges, or immunities secured by the  
Constitution and laws, shall be liable to the party injured in an action  
at law . . . .

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3 capacity under the Eleventh Amendment to the United States Constitution.  
4 (Docket No. 18, at 2, dated May 6, 2009.)

6 Federal Rule of Civil Procedure 12(b)(6) allows for the dismissal of an action  
7 for "failure to state a claim upon which relief can be granted[.]" Fed. R. Civ. P.  
8 12(b)(6). Dismissal under the rule is appropriate where the plaintiff has failed to  
9 show its claim is at least "plausible." Bell Atl. Corp. v. Twombly, 550 U.S. 544,  
10 557 (2007). In ruling upon a Federal Rule of Civil Procedure 12(b)(6) motion, the  
11 court must accept as true all the well-pleaded factual allegations in the complaint  
12 and construe all reasonable inferences in favor of the plaintiff. Perry v. New  
13 England Bus. Serv., Inc., 347 F.3d 343, 344 (1st Cir. 2003) (citing Beddall v.  
14 State St. Bank & Trust Co., 137 F.3d 12, 16 (1st Cir. 1998)).

17 The Eleventh Amendment states:

18 The Judicial power of the United States shall not be  
19 construed to extend to any suit in law or equity,  
20 commenced or prosecuted against one of the United  
21 States by Citizens of another State, or by Citizens or  
Subjects of any Foreign State.

22 U.S. Const. amend. XI.

23 The Eleventh Amendment applies not only to states but also to state  
24 agencies acting as "alter egos" to the state. See Ainsworth Aristocrat Int'l Party  
25 v. Tourism Co. of P.R., 818 F.2d 1034, 1036 n.2 (1st Cir. 1987) (quoting Mount  
26 Healthy City Sch. Dist. Bd. of Educ. v. Doyle, 429 U.S. 274, 280 (1977)).

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3 Similarly, the Eleventh Amendment extends not only to state agencies acting as  
4 alter egos to the state but also to state employees exercising their official duties.  
5 “[A] suit against a state official in his or her official capacity is not a suit against  
6 the official but rather is a suit against the official’s office. As such, it is no  
7 different from a suit against the State itself.” Will v. Mich. Dep’t of State Police,  
8 491 U.S. 58, 71 (1989) (citing Brandon v. Holt, 469 U.S. 464, 471 (1985));  
9 Cosme-Pérez v. Municipality of Juana Díaz, 585 F. Supp. 2d 229, 236 (D.P.R.  
10 2008). The moving defendants argue that at all times the individuals named in  
11 the complaint were acting within the scope of their employment, in their official  
12 capacities, and therefore are immune from judgment in the present suit.  
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## 16 ANALYSIS

17 There can be little doubt about the applicability of Eleventh Amendment  
18 immunity to defendant Commonwealth of Puerto Rico. See, e.g., Berrios v. Inter  
19 Am. Univ., 535 F.2d 1330, 1331 n.3 (1st Cir. 1976) (holding that Puerto Rico is  
20 to be considered a state for purposes of civil rights litigation). For the purposes  
21 of the Eleventh Amendment, Puerto Rico is afforded the same rights as a state  
22 and therefore any private suit against the Commonwealth of Puerto Rico is barred.  
23 See Sancho v. Yabucoa Sugar Co., 306 U.S. 505, 506 (1939); Porto Rico v. Rosaly  
24 y Castillo, 227 U.S. 270, 273-74 (1913); see, e.g., Jusino-Mercado v. Puerto Rico,  
25 214 F.3d 34, 37 (1st Cir. 2000); Ezratty v. Puerto Rico, 648 F.2d 770, 776 n.7  
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3 (1st Cir. 1981) (explicitly stating that Eleventh Amendment immunity applies to  
4 Puerto Rico).

6 The Puerto Rico government can be sued if it has consented to be sued by  
7 statute or if the right has been waived by Congress. Ramírez v. P.R. Fire Serv.,  
8 715 F.2d 694, 697 (1st Cir. 1983). Consequently, "[t]he eleventh amendment  
9 bars the recovery of damages in a federal court against the Commonwealth of  
10 Puerto Rico, e.g., Ramírez v. Puerto Rico Fire Service, 715 F.2d 694, 697 (1st Cir.  
11 1983), and, by the same token, it bars the recovery of damages in *official capacity*  
12 suits brought against Puerto Rico officials where recovery will come from the  
13 public fisc." Culebras Enter. Corp. v. Rivera Ríos, 813 F.2d 506, 516 (1st Cir.  
14 1987) (citing Kentucky v. Graham, 473 U.S. 159, 165-66 (1985)).

17 Plaintiff has presented a broad statement as to how his rights have been  
18 violated but gives no facts except for a conclusory statement that men in general  
19 are treated differently than women for purposes of serving their sentences for  
20 domestic violence law violations, and that men are not allowed programs that  
21 women are allowed to participate in. While the Constitution of Puerto Rico  
22 establishes the obligation of the local government to further the moral and social  
23 rehabilitation of criminals, there is no federal constitutional right to rehabilitative  
24 training or treatment. See O'Connor v. Donaldson, 422 U.S. 563 (1975); Santana

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3 v. Collazo, 533 F. Supp. 966, 976-77, 992 (D.P.R. 1982), rev'd on other grounds  
 4 Santana v. Collazo, 714 F.2d 1172, 1177 (1st Cir. 1983).

6 In order for the court to adjudicate a matter, Article III of the United States  
 7 Constitution requires that there be a case or controversy between the parties.  
 8 Allen v. Wright, 468 U.S. 737, 750 (1984); see U.S. Const. art. III, § 2. The  
 9 concept of ripeness has its roots in this case or controversy requirement, as well  
 10 as in prudential considerations. Mangual v. Rotger-Sabat, 317 F.3d 45, 59 (1st  
 11 Cir. 2003). The federal ripeness doctrine involves a question of "when" an issue  
 12 may be heard by the court. Federación de Maestros de P.R. v. Acevedo-Vilá, 545  
 13 F. Supp. 2d 219, 224 (D.P.R. 2008). For a case to be ripe there has to be a  
 14 "substantial controversy, between parties having adverse legal interests, of  
 15 sufficient immediacy and reality to warrant the issuance of a declaratory  
 16 judgment." Lake Carriers' Ass'n v. MacMullan, 406 U.S. 498, 506 (1972) (quoting  
 17 Md. Cas. Co. v. Pac. Coal & Oil Co., 312 U.S. 270, 273 (1941)). "The ripeness  
 18 doctrine seeks 'to prevent the courts, through avoidance of premature  
 19 adjudication, from entangling themselves in abstract disagreements.'" McInnis-  
 20 Misenor v. Me. Med. Ctr., 319 F.3d 63, 70 (1st Cir. 2003) (quoting Abbott Labs.  
 21 v. Gardner, 387 U.S. 136, 148 (1967)).

22 Determination of ripeness involves a two-pronged inquiry. McInnis-Misenor  
 23 v. Me. Med. Ctr., 319 F.3d at 70. "First, the court must consider whether the  
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3 issue presented is fit for review." Ernst & Young v. Depositors Econ. Prot. Corp.,  
4 45 F.3d 530, 535 (1st Cir. 1995). The critical question in the fitness analysis is  
5 "whether the claim involves uncertain and contingent events that may not occur  
6 as anticipated or may not occur at all." Id. at 536 (quoting Mass. Ass'n of Afro-  
7 Am. Police, Inc. v. Boston Police Dep't, 973 F.2d 18, 20 (1st Cir. 1992)). The  
8 second prong of the inquiry refers to the hardship the parties may suffer if the  
9 court withholds consideration of the controversy. Ernst & Young v. Depositors  
10 Econ. Prot. Corp., 45 F.3d at 536.

13 Any request for injunctive relief has been rendered moot by plaintiff's  
14 release. Imprisonment for the same offenses for which the plaintiff was convicted  
15 is impossible. Therefore the only remaining matter is if plaintiff is entitled to  
16 damages from the defendants in their individual capacities. In order to be liable,  
17 there must be an identifiable issue to be tried leading to a possible award of  
18 damages.

21 The Corrections Administration has submitted a Report for Possible Parole  
22 reflecting that plaintiff was sentenced on May 31, 2007, was eligible for parole on  
23 November 20, 2007, and completed his sentence on October 5, 2008 for  
24 violations of Article 192 of the Penal Code and Law 54. (Docket No. 21-2.)  
25 Plaintiff had also sought administrative remedies and received a comprehensive  
26 resolution of his petition for review reflecting the reasons why review was denied.  
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3 (Docket No. 21-4). The resolution is dated July 1, 2008, and the record does not  
4 reflect that plaintiff continued the administrative review process to the next level,  
5 the Commonwealth Appellate Court. See P.R. Laws Ann. tit. 3, § 2172. There is  
6 no futility exception to the administrative exhaustion requirement. See Medina-  
7 Claudio v. Rodríguez-Mateo, 292 F.3d 31, 35 (1st Cir. 2002). At very least,  
8 plaintiff failed to exhaust his available administrative remedies. But even looking  
9 at the complaint liberally, I can see no series of facts which would lead a  
10 reasonable trier of fact to determine that plaintiff's constitutional rights were  
11 violated by these defendants under color of state law.

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13 In conclusion, plaintiff has failed to state a claim upon which relief can be  
14 granted. Again, there is no federal constitutional right to rehabilitative training or  
15 treatment and as a result there is no violation of his civil rights based upon such  
16 a constitutional right.

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18 Accordingly, the complaint is hereby dismissed as to Wilfredo-Adorno,  
19 Lilliam Álvarez and María E. Meléndez-Rivera for failing to state a claim upon  
20 which relief might be granted, and based upon the affirmative defense of  
21 sovereign immunity.

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23 The complaint as to co-defendant Annie González-Pérez formerly of the  
24 Corrections Administration is dismissed for failure to serve this defendant within  
25 120 days from the filing of the complaint. Fed. R. Civ. P. 4(m).

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3 The Clerk is directed to enter judgment dismissing this complaint in its  
4 entirety.  
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6 At San Juan, Puerto Rico, this 29th day of May, 2009.  
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8 S/ JUSTO ARENAS  
9 Chief United States Magistrate Judge  
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